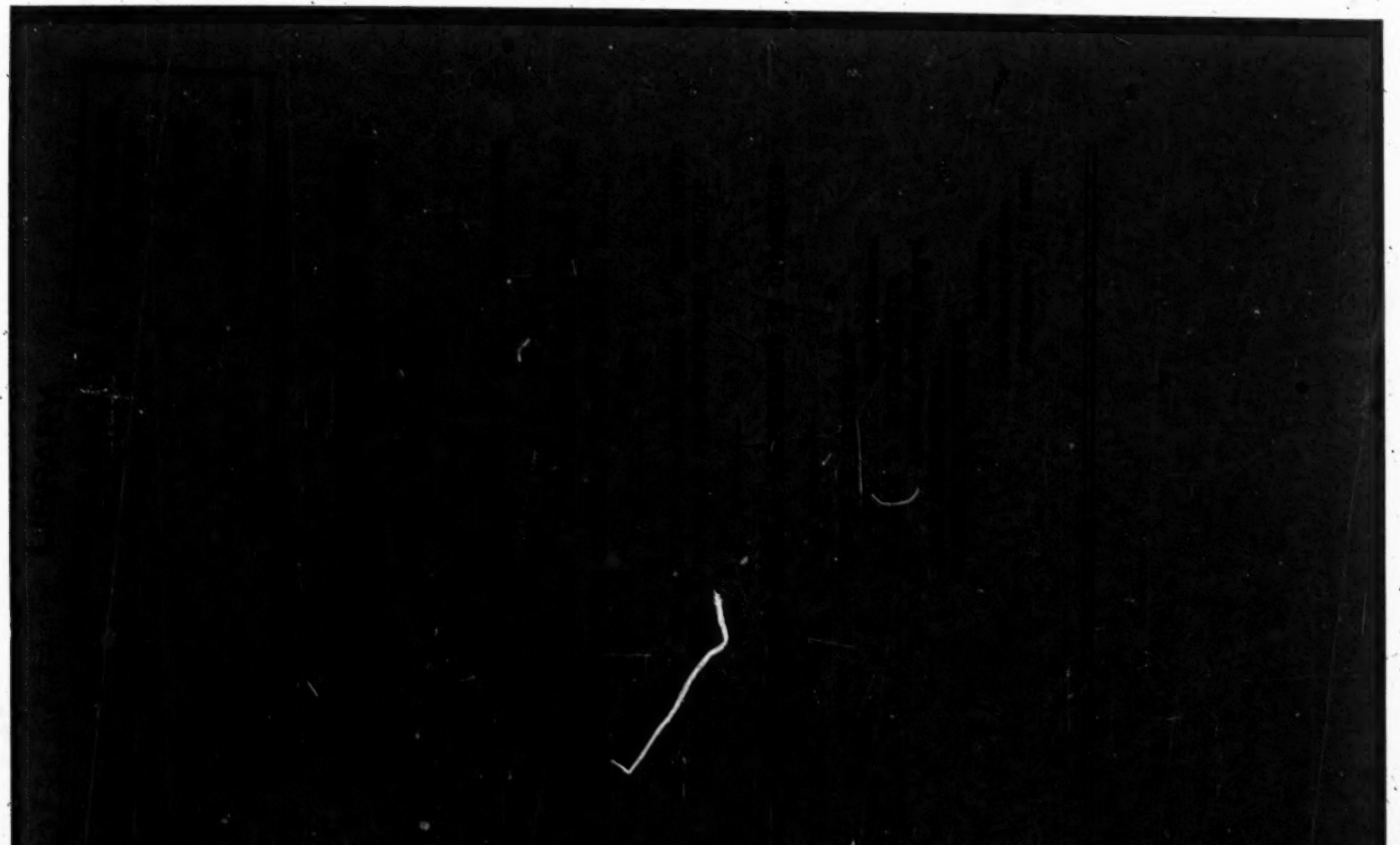

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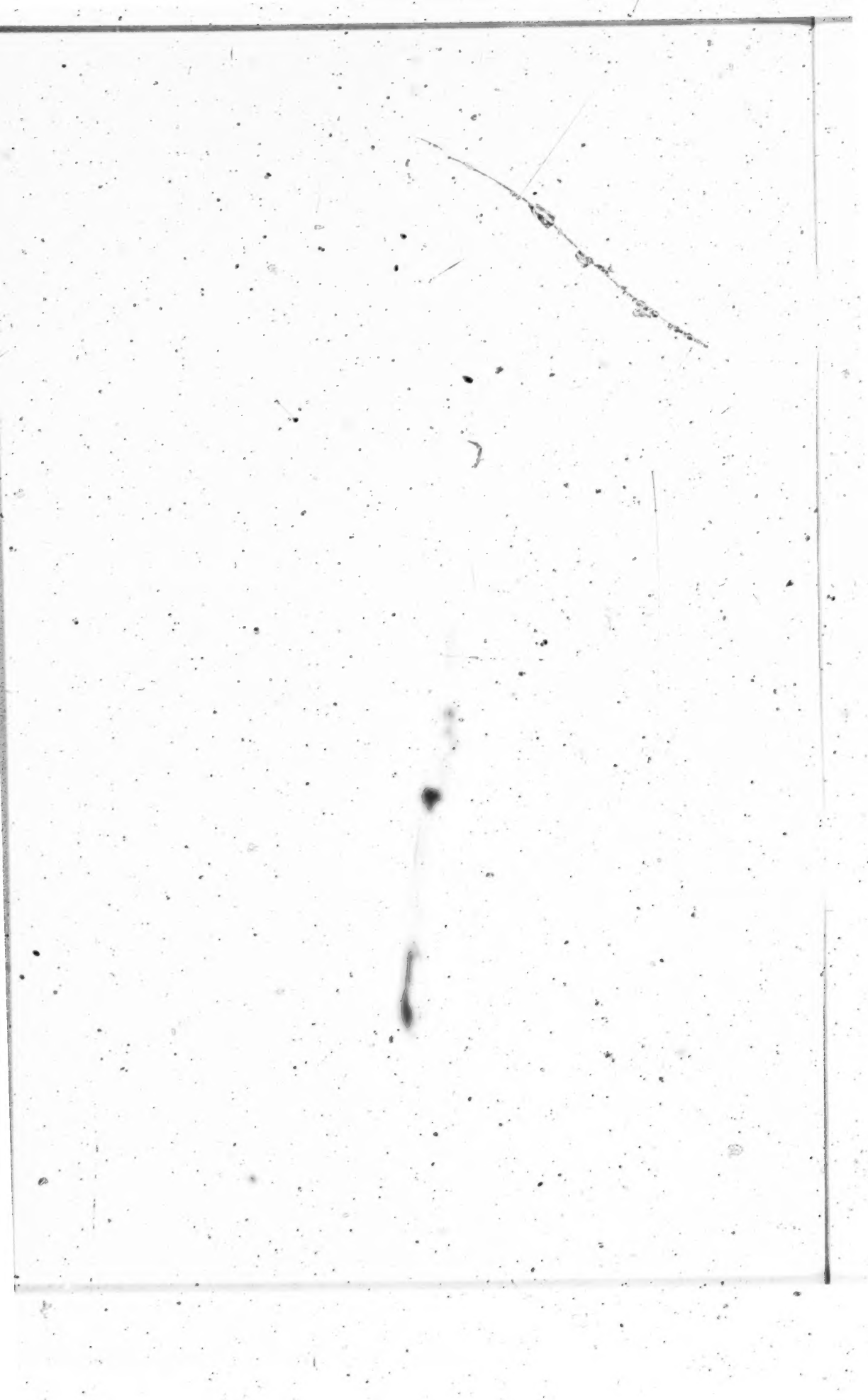

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 712

TRIANGLE IMPROVEMENT COUNCIL, ET AL., PETITIONERS

v.

WILLIAM S. RITCHIE, COMMISSIONER, STATE ROAD COMMISSION OF THE STATE OF WEST VIRGINIA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinions of the district court (Pet. App. 1a–25a) and the court of appeals (Pet. App. 30a–31a) are not yet reported. The order of the court of appeals denying a motion for rehearing en banc (Pet. App. 33a–35a) and the opinion dissenting from that denial (36a–42a) is reported at 314 F. Supp. 20.

JURISDICTION

The judgment of the court of appeals was entered on May 14, 1970 (Pet. App. 32a). A petition for rehearing was denied on July 14, 1970 (Pet. App. 33a). The

petition for a writ of certiorari was filed on September 17, 1970. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the Department of Transportation correctly construed its own regulation as not requiring that a formal relocation plan be submitted and approved for federally-aided highway projects on which rights-of-way had been acquired and persons dislocated prior to the passage on August 23, 1968, of new relocation amendments to the Federal-Aid Highway Act.

2. Whether the finding of the district court (Pet. App. 23a) that "[t]he evidence indicates that adequate relocation housing, on an open racial basis, will be available in the Charleston area for an orderly relocation of the displacees from the interstate highway corridor," is clearly erroneous.

STATEMENT

This action seeks injunctive and declaratory relief to prevent the construction of a section of Interstate Highways I–64 and I–77 through the so-called Triangle area in Charleston, West Virginia, inhabited primarily by low income Negroes. Petitioners allege that respondents[1] failed to comply with the statutory and regulatory requirements for relocation for residents to be displaced by the highway.

After a full trial, the district court rendered a lengthy opinion (Pet. App. 1a–25a) holding that (1)

[1] Respondents include officials of the State of West Virginia, the Secretary of Transportation and two subordinate officials of the Department of Transportation.

the respondents had not failed to comply with any provisions of the Federal-Aid Highway Act dealing with relocation of persons displaced by federally-aided highways, or any provisions of the Department of Transportation's Instructional Memorandum implementing those statutory provisions, which were applicable to the projects in question; (2) adequate relocation housing is expected to be available to accommodate all persons remaining in the area; and (3) petitioners had not been denied equal protection of the laws.[2] The court of appeals affirmed on the opinion of the district court (Pet. App. 30a).

Prior to August 23, 1968, federal statutes required only that States give satisfactory assurances to the Secretary of Transportation that relocation advisory assistance would be provided to persons displaced by interstate highways. (Vol. II, pp. 83–84).[3] On August 23, 1968, Congress enacted new relocation amendments to the Federal-Aid Highway Act, 23 U.S.C. 501, *et seq.* These amendments (23 U.S.C. 502) prohibited the Secretary from approving projects which cause displacement of persons unless he has received satisfactory assurances from the State Highway Department that within a reasonable period of time prior to displacement there will be available, to the extent that can reasonably be accomplished, at

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[2] The district court held that insofar as the suit sought to attack the basic decision to route the highway through that area, made final in August 1964, it was barred by laches (Pet. App. 10a–11a), and subsequently that issue has been abandoned by petitioners.

[3] References to Vol. I and Vol. II are to the record in the court of appeals.

rents or prices within the financial means of the individuals displaced, decent, safe, and sanitary dwellings equal to the number of dwellings needed by such displaced persons.[4]

At the time the amendments were enacted, the projects of which Triangle is one part were already well under way. Many people had already been displaced from the areas (although the number of persons displaced in Triangle was small), and the Secretary had authorized all acquisitions of rights-of-way between April 19, 1966, and May 23, 1967 (Pet. App. 9a, 11a–12a). Petitioners basically contend that, even though the projects were well under way when the amendments were passed, respondents are required to suspend the projects until a formal relocation plan has been drawn up, and it has been determined from such a plan that adequate relocation housing will be available.

Petitioners relied in the district court on provisions of an Instructional Memorandum of the Department of Transportation regarding the relocation of persons displaced by federal-aid highways (Pet. App. 52a–55a). The district court, however, agreed with the respondents' construction of the memorandum as not requiring the formulation of such a formal plan for projects, such as the ones including Triangle, on which substantial displacements had occurred before August 23, 1968 (Pet. App. 18a–19a). The district court cited

[4] The amendments also provided for greatly increased payments to displaced persons, such as rent supplements of up to $1500 to displaced tenants, and the rendering of relocation assistance to those to be displaced (23 U.S.C. 505–508).

provisions of the memorandum stating that it applies only to projects authorized on or before August 23, 1968, "on which individuals * * * have not been displaced" and that "The above assurances are not required where authorization to acquire right-of-way or to commence construction has been given prior to the issuance of this memorandum" (Pars. 2b and 5b, Pet. App. 49a–50a, 52a).

The district court further rejected petitioners' contention that they were being denied equal protection of the laws as the result of their prospective relocation. At the trial, evidence had been presented regarding both past and present practices of the state and federal agencies concerning relocations and the prospects for relocating in adequate housing the individuals then remaining in the Triangle area. There was testimony that the relocation office run by the State makes a survey of individuals to be displaced, to determine whether they want to relocate, what their incomes and family situations are, where they work and go to church, etc.; and that it keeps a continual survey of housing available for sale or rent, on a day-to-day basis. On the two projects which include Triangle, nine or ten people are assigned full time duty inspecting housing available to dislocatees and rendering personal assistance to such persons, such as taking them in cars to show them property, helping them move into housing and providing payments required by the Act to be made to persons dislocated. (Vol. II, pp. 337–338.)

In addition, it appeared that public housing alone in Charleston was expected to have a turnover sufficient

to supply replacement housing to all Triangle displacees (Vol. II, p. 173). A large daily listing of private housing is maintained by the relocation office, and despite a substantial number of displacements in Charleston in the past two years, the number of available dwelling units had not decreased (Vol. II, pp. 325–326). Between January 1967, and March 1969, the State Relocation Office had relocated about 2000 persons (Vol. II, pp. 369–384). On the basis of this experience with 2000 relocations, the Director of the Right-Of-Way Division of the State Road Commission testified that he believed that the remaining Triangle residents (then about 284) could be relocated in adequate housing, and that successful relocation would not be hindered by racial discrimination. (Vol. II, p. 369).

The United States Federal Highway Administration also has carefully scrutinized relocations in this area. It has reviewed 512 relocation cases and highway projects in West Virginia, including about 125 relocations on the two projects here involved (Vol. II, p. 117). It audited the State's progress with regard to relocations on a day-to-day basis (Vol. II, pp. 118–119) and ascertained that the State Highway officials were operating a well-staffed, vigorous and convenient relocation office in the area, which was actively assisting residents (Vol. II, pp. 123–124). Mr. Gerald Saunders, the Division Right-of-Way Officer for the Bureau of Public Roads, stated (Vol. II, p. 75):

> They have to my satisfaction, based on the two years experience that I have had in this office closely watching their whole right-of-way oper-

ation, satisfied me that they can relocate the people in the Triangle area and other areas. Although petitioners relied on memoranda written in early 1968 suggesting an impending shortage of relocation housing in Charleston (Vol. I, pp. 61–70), Mr. P. E. Carpenter, the Division Engineer for the West Virginia Division of the Bureau of Public Roads (Vol. II, p. 398), testified that since then, the relocation situation had improved. He pointed particularly to the availability of rental supplements under the 1968 amendments, and also to the fact that anticipated urban renewal programs had been delayed (Vol. II, p. 414). In addition, witnesses for the state testified that the relocation program of Triangle residents had deliberately been paced "over the period of time it takes to see that every one of them is offered safe and sanitary and decent housing so that no one is forced to move until they have these accommodations available" (Vol. II, pp. 389–390).

Subsequent to the district court's decision, while the case was pending in the court of appeals, the Department of Transportation issued a memorandum dated April 10, 1970, which stated (Pet. App. 62a–63a):

> The division engineers should not authorize any phase of construction * * * which would require the displacement of individuals or families, or permit the dislocation of individuals or families on any such project or on any project already authorized, until such time as the person being relocated has either by himself obtained and has the right of possession of adequate replacement housing or the state offers

him adequate replacement housing which is available for immediate occupancy.

ARGUMENT

1. The constitutional issue petitioners raise is dependent on their assertion that adequate relocation housing will not in fact be available. The district court explicitly ruled to the contrary (see Pet. App. 22a–25a), finding (Pet. App. 23a):

> The evidence indicates that adequate relocation housing, on an open racial basis, will be available in the Charleston area for an orderly relocation of the displacees from the interstate highway corridor. * * *

The court of appeals necessarily approved that finding when it affirmed on the opinion of the district court.

All the factual contentions which petitioners make are disputed on the record. For example, while petitioners assert without record reference (Pet. 10) that the "shortage has worsened," the evidence at trial showed that the supply of private housing available had remained constant, and that the urban renewal program which petitioners claimed would create displacements which would cause conflicting demands on existing housing had not in fact started, and was not anticipated to start during the period in which most highway displacements would take place (Vol. II, pp. 374–375). Similarly, petitioners' contention (*E.g.*, Pet. 7, 11) that the only basis for the conclusion that adequate housing is expected to be available was "vague or general promises" or "oral assurances" is

incorrect; that conclusion was based on two years' experience with a large number of relocations and close knowledge of the current state of the public and private housing market. Since 2000 persons have been successfully relocated from these projects, there is no reason to doubt the correctness of the district court's findings that the limited number of remaining residents—about 100 in the Triangle area and the same number in other areas—also can be successfully relocated.[5]

2. Petitioners' contentions regarding the necessity for submission of a formal relocation plan for these projects involve only the applicability of certain provisions of the Department of Transportation's memoranda to projects under way when the statute was passed in August, 1968. These are nonrecurring issues of diminishing importance.

The provisions of the memorandum relating to submission of formal relocation plans apply only to projects in which significant displacement of persons had not taken place prior to the 1968 statutory amendments. See Pet. 18a. Similarly, as petitioners recognize (Pet. 16), the memorandum of April 10, 1970 (Pet. App. 62a–63a) does not require the submission of such a plan. (Pet. 3). While formal plans are a useful tool

[5] Petitioners' contention that the decision below conflicts with *Arrington* v. *City of Fairfield, Alabama*, 414 F. 2d 687 (C.A. 5), rests entirely on their factual assertion that adequate housing will not be available. Even giving *Arrington* its broadest possible reading, that case could be construed to hold at most only that allegations of the kind made by petitioners state a claim on which relief can be granted, *if proven*.

in planning for future relocations for projects which are not well under way, contrary to petitioners' contention (Pet. 16) they are not "the only mechanism" which can successfully carry out relocations.

It is sufficient to provide that on projects already under way persons will not be removed until adequate housing is available. That is what the April 10 memorandum provides, and that is what the record shows that respondents have been doing. Indeed, even before the April 10 memorandum,[*] relocation of Triangle residents had taken place "over the period of time it takes to see that every one of them is offered safe and sanitary and decent housing so that no one is forced to move until they have these accommodations available" (Vol. II, pp. 389–90).

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[*] The circular memorandum of April 10, 1970, slightly revised an earlier circular memorandum of March 27, 1970, which formally implemented a policy announcement of February 16, 1970 by Secretary of Transportation Volpe. Petitioners' implication (Pet. 6) that the government concealed that policy statement is not correct. It was the government which brought the Secretary's policy statement to the Court of Appeals' attention by printing the press release containing the statement as an appendix to its brief in the court of appeals. The government did resist giving to petitioners an internal memorandum from the Secretary to his subordinates, which the court of appeals ordered to be produced. That internal memorandum (Pet. App. 60a–61a) in no relevant way differed from the press release announcing the Secretary's policy, or from the circular memoranda formally implementing the policy (Pet. App. 62a–63a).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

WILLIAM D. RUCKELSHAUS,
Assistant Attorney General.

ALAN S. ROSENTHAL,
WALTER H. FLEISCHER,
Attorneys.

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